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LEBOEUF, LAMB, LEIBY & MACRAE

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

725 SOUTH FIGUEROA STREET
LOS ANGELES, CA 90017-5436

(213) 955-7300

FACSIMILE: (213) 955-7399

TELEX: 676962

EUROPEAN COMMUNITY: BRUSSELS, BELGIUM AND LONDON, ENGLAND

RUSSIA: MOSCOW

DIRECT DIAL
213/ 955-7300

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July 15, 1992

ORIGINAL
FILE

BY HAND

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 92-90 In The Matter of The
Telephone Consumer Protection Act of 1991

Dear Sir or Madam:

Further to the Comments of Mr. Fax and Reply Comments of Mr. Fax filed with your office on May 26, 1992, and June 25, 1992, respectively, enclosed please find the original and nine copies of the Supplemental Comments of Mr. Fax in response to the above-named Notice of Proposed Rulemaking. Pursuant to 17 CFR 1.419(b), please distribute these Supplemental Comments to the Commissioners, Bureau, and Information Office.

Thank you in advance for your attention to this matter.

Sincerely yours,

Dean Hansell

Dean Hansell

DH:jls
Encl.

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**FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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OFFICE OF THE SECRETARY**

In the Matter of)

The Telephone Consumer)
Protection Act of 1991)

CC Docket No.
92-90

SUPPLEMENTAL COMMENTS OF MR. FAX

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Mr. Fax, by its counsel, LeBoeuf, Lamb, Leiby & MacRae, respectfully submits these Supplemental Comments regarding the Federal Communication Commission's ("Commission") Notice of Proposed Rulemaking and Request for Comments thereon, released April 17, 1992, in the above captioned matter. These Supplemental Comments are late-filed as they concern a new development.

The California legislature is presently examining precisely the same question as that being considered by the Commission in this proceeding. California Assembly Bill 2438 is an attempt to provide owners of facsimile machines with a simple method to prevent receipt of unwanted communications, while permitting those who would like to receive unsolicited facsimiles to do so. The bill has passed the Assembly and is now before the Senate Committee on Appropriations. A copy of Assembly Bill 2438, as amended June 30, 1992, is attached hereto as Exhibit A.

By allowing recipients to decide for themselves whether or not they would like to receive unsolicited facsimiles, and by permitting recipients to bar transmission of such facsimiles easily and without cost to themselves, California's legislation thoughtfully balances the First Amendment rights of facsimile senders and willing recipients against the interests of unwilling recipients. Under California's prospective scheme, the ability of recipients to easily object to, and thereby avoid, unwanted facsimiles is assured by the requirement that a toll-free number and address appear prominently on each unsolicited facsimile.

This legislation has the support of both the recipients of unsolicited facsimiles and the regulated community.

California's pending legislation should be viewed as a model from which the Commission may draw in this proceeding. California's solution embodies the recommendations previously made by Mr. Fax to the Commission in this proceeding. (See Reply Comments of Mr. Fax, pp. 9-10.) It is administratively workable and constitutionally inoffensive, while providing sufficient protection to those who would prefer not to receive unsolicited facsimiles. Further, the Commission's adoption of rules which closely parallel those being adopted by California will help to create uniformity in this arena, thereby simplifying compliance by facsimile senders and averting confusion of facsimile recipients regarding the rights afforded them by state and federal law.

For these reasons, Mr. Fax strongly recommends that the Commission carefully consider adoption of rules which closely parallel California's laudable solution.

Respectfully submitted,

July 13, 1992

LeBoeuf, Lamb, Leiby & MacRae

By: 

Dean Hansell
Ari Kahan
725 South Figueroa Street
Suite 3600
Los Angeles, California 90017-5436

Counsel for
Mr. Fax
22432 Avenida Empresa
Rancho Santa Margarita, CA 92718

An act to add Section 17538.4 to the Business and Professions Code, relating to advertising.

LEGISLATIVE COUNSEL'S DIGEST

AB 2438, as amended, Katz. Advertising: unsolicited fax transmissions. Existing law contains various provisions regulating the advertisement of goods and services. This bill would prohibit any person or entity conducting business in this state from faxing or causing to be faxed documents consisting of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit unless that person or entity establishes a toll-free telephone number which a recipient may call to notify the sender not to fax the recipient any further unsolicited documents. This bill would require that notification of the toll-free telephone number, and an address a recipient may write to, be included on all unsolicited faxed documents, as specified, and would prohibit the faxing of any unsolicited documents to any person who has requested not to receive any further unsolicited documents. Since a violation of this latter provision would be an infraction punishable by a fine of \$500 for each and every transmission, the bill would also impose a state-mandated local program by creating a new crime. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

TEXT: The people of the State of California do enact as follows:

SECTION 1. Section 17538.4 is added to the Business and Professions Code, to read: 17538.4. (a) No person or entity conducting business in this state shall fax or cause to be faxed documents consisting of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit unless that person or entity establishes a toll-free telephone number which a recipient of the unsolicited faxed documents may call to notify the sender not to fax the recipient any further unsolicited documents. (b) All unsolicited faxed documents subject to this section shall include a statement, in at least 9-point type, informing the recipient of the toll-free telephone number the recipient may call, and an address the recipient may write to, notifying the sender not to fax the recipient any further unsolicited documents to the fax number, or numbers specified by the recipient. (c) Upon notification by a recipient of his or her request not to receive any further unsolicited faxed documents, no person or entity conducting

business in this state shall fax or cause to be faxed any unsolicited documents to that recipient. (d) Any violation of subdivision (c) is an infraction punishable by a fine of five hundred dollars (\$500) for each and every transmission. (e) As used in this section, "fax" or "cause to be faxed" shall not include or refer to the transmission of any documents by a telecommunications utility to the extent that the telecommunications utility merely carries that transmission over its network.

SECTION 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CERTIFICATE OF SERVICE

I, Jeri Staley, do hereby certify that a true copy of the foregoing Supplemental Comments of Mr. Fax was served this 14th day of July 1992, by United States first-class mail, postage prepaid, upon the parties listed on the attached service list.



Jeri Staley

Dated: July 14, 1992

SERVICE LIST

LINDA D. HERSHMAN
Vice President - External Affairs
THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY
227 Church Street
New Haven, CT 06506

DANIEL L. JAFFE
Executive Vice President, Government Relations
ASSOCIATION OF NATIONAL ADVERTISERS, INC.
1725 K Street, NW
Suite 601
Washington, D.C. 20006

JOHN KAMP
Vice President
AMERICAN ASSOCIATION OF ADVERTISING AGENCIES
1899 L Street, NW
Suite 700
Washington, D.C. 90036

JAY C. KEITHLEY
1850 M Street, NW
Suite 1100
Washington, D.C. 20036

W. RICHARD MORRIS
P.O. Box 11315
Kansas City, MO 64112

DONALD M. McGRATH
NATIONAL FAXLIST
P.O. Box 9777
Trenton, NJ 08650

JOSEPHINE S. TRUBEK
General Counsel
ROCHESTER TELEPHONE CORPORATION
180 South Clinton Avenue
Rochester, New York 14646